

**Performance Audit 22-06:
Chattanooga Area Regional
Transportation Authority
Procurement Process**

February 2023

City Auditor

Stan Sewell, CPA, CGFM, CFE

Senior Auditor

Jeff Connor, J.D., CFE





OFFICE OF INTERNAL AUDIT

Stan Sewell, City Auditor

February 17, 2023

To: Mayor Kelly
City Council Members
CARTA Board Members

RE: Chattanooga Area Regional Transportation Authority Procurement Process
(Report #22-06)

Dear Mayor Kelly, City Council Members and CARTA Board Members:

The attached report contains the results of our audit of the Chattanooga Area Regional Transportation Authority (CARTA) procurement process. Our audit found that CARTA's procurement procedures generally align with the Federal Transit Administration guidelines for federally subsidized procurements. However, our audit also disclosed concerns that CARTA's Purchasing Policy does not require compliance with State laws governing procurements by transit authorities created under T.C.A. § 7-56-101, *et seq.*, or establish specific procedures for evaluating contractor responsibility. In order to address the noted areas of concern, we recommended actions to strengthen CARTA's procurement procedures.

Due to scope limitations encountered during the audit, we were unable to adequately assess the design, implementation, and operating effectiveness of CARTA's procurement system and controls, or provide reasonable assurance that procurements by CARTA with City appropriated funds comply with applicable law and regulations.

Sincerely,

Stan Sewell, CPA, CGFM, CFE
City Auditor

Attachment

cc: Audit Committee Members
Joda Thongnopnua, Chief of Staff
Ryan Ewalt, Chief Operating Officer
Vickie Haley, Chief Financial Officer
Julia Bursch, Deputy Chief Operating Officer
Lisa Maragnano, CARTA Executive Director
Jim Arnette, Tennessee Local Government Audit jim.arnette@cot.tn.gov

TABLE OF CONTENTS

AUDIT PURPOSE.....	2
BACKGROUND.....	2
Financial Information.....	4
FINDINGS AND RECOMMENDATIONS.....	4
State procurement laws applicable to public transit authorities in Tennessee.....	4
Procedures for evaluating contractor responsibility.....	5
SCOPE LIMITATIONS AFFECTING THE AUDIT OBJECTIVES..	7
APPENDIX A: SCOPE, METHODOLOGY AND STANDARDS.....	8
APPENDIX B: PRIORITY LEVEL DEFINITIONS.....	9
APPENDIX C: 2015 OIA NONCOMPLIANCE MEMO.....	10

AUDIT PURPOSE

This audit was conducted in accordance with the Office of Internal Audit's 2022 Audit Agenda. The objectives of this audit were to examine the Chattanooga Area Regional Transportation Authority (CARTA) procurement system and controls and determine if CARTA's procurement process complies with applicable law, regulations, and CARTA's procurement policies and procedures.

BACKGROUND

CARTA operates Chattanooga's multimodal transportation system serving the City of Chattanooga (hereinafter the "City") and surrounding areas. CARTA was established in 1973 as a component unit of the City under the authority of T.C.A. § 7-56-101, *et seq.*, which allows municipalities and local governments to create and operate public transportation systems.¹



CARTA is independently governed by an eleven-member board of directors, ten (10) of which are appointed by the City.² The U.S. Department of Transportation and State of Tennessee, under contracts with CARTA, have funded a significant portion of the cost of acquisition and development of the CARTA transit system. CARTA also receives substantial planning grants and operating subsidies from the Federal Transit Administration (FTA), the Tennessee Department of Transportation (TDOT), and the City.

¹ The Governmental Accounting Standards Board (GASB) defines a component unit as "a legally separate organization for which the elected officials of the primary government are financially accountable; or where the nature and significance of their relationship with the primary government are such that exclusion would cause the reporting entity's financial statements to be misleading." [GASBS 14, ¶12 and ¶20]

² Hamilton County appoints one (1) CARTA board member.

Recipients of FTA assistance must abide by Federal regulations applicable to federally subsidized procurements. To comply with Federal procurement requirements, CARTA developed and implemented the *CARTA Purchasing Policy* (hereinafter the “Purchasing Policy”), which establishes CARTA’s policies and procedures for procuring goods and services.³



The Purchasing Policy establishes different procurement requirements depending on the amount of the purchase. For example, purchases under \$10,000 do not require competitive quotes if the purchase price is determined to be fair and reasonable.⁴ For procurements between

³ The Purchasing Policy was designed to comply with the guidance set forth in FTA Circular 4220.1F. The FTA developed Circular 4220.1F to assist recipients of FTA funding in complying with Federal procurement regulations.

⁴ In the absence of a fair and reasonable price determination, procurements less than \$10,000 require at least two (2) competitive quotes. In addition, Davis-Bacon prevailing wage requirements apply to purchases exceeding \$2,000.

\$10,000 and \$250,000, two (2) competitive quotes, written or verbal, are required.⁵ For procurements over \$250,000, competitive solicitations in the form of either sealed bids or request for proposals are required and bid solicitations must be publicly advertised to promote open and fair competition.

Financial Information

	FY2021	FY2020
<i>Operating Expenses</i>	\$26,924,059	\$26,350,023
<i>Operating Revenues</i>	\$6,790,583	\$8,210,218
<i>Operating Grants and Subsidies</i>	\$8,374,868	\$9,377,100
<i>Capital Grants and Contributions</i>	\$13,059,451	\$12,642,442

Source: CARTA Financial Reports 2020-21

FINDINGS AND RECOMMENDATIONS

State procurement laws applicable to transit authorities created by local governments in Tennessee

Federal Grants Management Common Rules and FTA guidelines require recipients of FTA assistance to use their own procurement procedures that comply with applicable state and local laws and regulations, as well as Federal laws and regulations.⁶ Although CARTA’s procurement procedures generally align with FTA guidelines for federally funded procurements, the Purchasing Policy does not establish procedures requiring compliance with State laws governing procurements by transit authorities created under T.C.A. § 7-56-101, *et seq.* In particular, the Purchasing Policy does not require compliance with Tennessee’s Municipal Purchasing Law, or T.C.A. § 12-3-1212, which limits the threshold dollar amount over which public advertisement and sealed competitive bids and proposals are required.⁷

According to the Tennessee Attorney General, when a transit authority is created by a municipality or county under T.C.A. § 7-56-101, the transit authority is subject to the same purchasing laws that apply to

⁵ CARTA requires written quotes for purchases exceeding \$50,000, but less than \$250,000.

⁶ FTA Circular 4220.1F, Chapter II, Paragraph 4.

⁷ The Purchasing Policy sets the threshold amount for competitive bids and proposals at \$250,000. However, T.C.A. § 12-3-1212 caps the threshold amount for competitive bids and proposals at \$50,000 (formerly \$25,000 prior to May 2022) for local governmental entities with centralized purchasing authority and a full-time purchasing agent. Additionally, at least three (3) written quotes are required (whenever possible) for purchases costing less than the \$50,000 competitive bidding threshold, but more than forty percent (40%) of the threshold.

the municipality or county that established it.⁸ In the case of CARTA, which was created by the City and subsidized by both the City and Hamilton County, CARTA must consider the State purchasing laws applicable to both the City and County and follow the most stringent law applicable to the particular purchase.⁹

Consistent with the Tennessee Attorney General's opinion, the OIA previously recommended in July 2015 that CARTA implement policies and procedures to ensure compliance with the Municipal Purchasing Law, and all such policies necessary to comply with the *Internal Control and Compliance Manual for Tennessee Municipalities*.¹⁰

Recommendation 1:

We recommend CARTA implement policies and procedures to ensure compliance with State laws governing procurements by transit authorities created under T.C.A. § 7-56-101, *et seq.*, and include those policies and procedures in the Purchasing Policy.

Auditee Response: *In accordance with the Tennessee Attorney General's Opinion No. 22-14, dated November 15, 2022, CARTA concurs with the recommendation made above that CARTA implement policies and procedures to ensure compliance with State laws governing procurements by transit authorities created under T.C.A. § 7-56-101, et seq. Small purchases will be updated from purchases/contracts more than \$10,000 to \$250,000 to purchases/contracts more than \$10,000 to \$49,999. Large purchases will be updated from purchases/contracts more than \$250,000 to purchases/contracts more than \$50,000.*

Estimated Implementation Date: July 1, 2023

Priority Level: 1

Procedures for evaluating contractor responsibility

FTA guidelines require that recipients of Federal assistance must award contracts only to responsible contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Before making a determination of responsibility, the FTA requires recipients to obtain information sufficient to establish that a prospective contractor meets the following

⁸ See Tenn. Att'y Gen. Op. 22-14.

⁹ *Id.* We note in our analysis of procurement best practices for public transportation authorities in Tennessee that the Knoxville Area Transit (KAT) utilizes the City of Knoxville's Purchasing Department to oversee purchases subject to State procurement requirements.

¹⁰ See Appendix C.

standards of responsibility:

- Financial resources adequate to perform the contract;
- Ability to meet the required delivery or performance schedule, taking into consideration all existing commitments;
- Satisfactory record of performance;
- History of integrity and business ethics;
- Be neither debarred nor suspended from Federal programs under DOT regulations;
- Necessary organization, experience, accounting and operational controls, and technical skills;
- Compliance with applicable licensing and tax laws;
- Necessary production, construction, and technical equipment and facilities;
- Compliance with applicable Disadvantaged Business Enterprise (DBE) requirements; and
- All other qualifications required to receive an award under applicable laws and regulations.¹¹

The Purchasing Policy acknowledges that as a recipient of Federal assistance, CARTA is obligated to award contracts only to responsible contractors.¹² However, the Purchasing Policy does not establish specific procedures for evaluating contractor responsibility. Establishing clearly defined processes for evaluating contractor performance history and responsibility reduces the risk of nonconforming goods and services, and provides insight into past performance, legal or financial issues, and compliance history of the contractor.

Recommendation 2:

We recommend CARTA establish specific procedures for evaluating and documenting contractor responsibility, consistent with FTA guidelines, and include those procedures in the Purchasing Policy.

***Auditee Response:** CARTA has procedures for evaluating and documenting contractor responsibility and has updated its Purchasing Policy to include these checklists and procedures.*

***Estimated Implementation Date:** Completed*

***Priority Level:** 1*

¹¹ FTA Circular 4220.1F, Chapter IV, Para. 8.b

¹² Purchasing Policy Part V, General Procurement Practices, Para. A

SCOPE LIMITATIONS AFFECTING THE AUDIT OBJECTIVES

The *U.S. Government Accountability Office Government Auditing Standards* (GAGAS) require that when evaluating information systems is an audit objective, auditors should test the information system controls.¹³ GAGAS standards further require auditors to obtain sufficient, appropriate evidence to provide a reasonable basis for addressing the audit objectives and supporting their findings and conclusions.¹⁴ Evidence is neither sufficient nor appropriate when: (1) using the evidence carries an unacceptably high risk that it could lead auditors to reach an incorrect or improper conclusion; (2) the evidence has significant limitations given the audit objectives; or (3) the evidence does not provide an adequate basis for addressing the audit objectives or supporting the findings and conclusions.¹⁵

In this audit, CARTA management declined to provide access to CARTA's computerized procurement system, and instructed that all communications, whether written or verbal, be directed to CARTA's Executive Director. Consequently, we were unable to test CARTA's procurement system and controls in accordance with GAGAS requirements, or obtain sufficient, appropriate evidence to determine if CARTA's procurements comply with applicable law, regulations, and the Purchasing Policy. Due to these scope limitations, we could not sufficiently examine the design, implementation, and operating effectiveness of CARTA's procurement system and controls, or provide reasonable assurance that procurements by CARTA with City appropriated funds comply with applicable law and regulations.¹⁶

¹³ GAGAS 8.62

¹⁴ GAGAS 8.90

¹⁵ GAGAS 8.113(b)

¹⁶ Scope limitations occur when restrictions placed on audit activity preclude the auditor from obtaining sufficient, appropriate evidence to address the audit objectives and support the auditor's findings and conclusions, *i.e.*, unable to apply all the audit procedures considered necessary in the circumstances. Scope limitations bear the risk of inconclusive results and/or incorrect conclusions.

APPENDIX A: SCOPE, METHODOLOGY AND STANDARDS

Based on the work performed during the preliminary survey and our assessment of risk, this audit covers CARTA's procurement process from July 1, 2021 to June 30, 2022. As part of our analysis, we reviewed documentation maintained by CARTA, the City, the FTA, TDOT and the Tennessee Attorney General's Office.

To meet the audit objectives, we applied the following procedures:

- Reviewed applicable Federal and State procurement laws and regulations;
- Reviewed CARTA's purchasing policies and procedures;
- Evaluated best practices and governmental standards for procurement programs;
- Performed a risk assessment to identify high-risk activities and potential fraud risks; and
- Held discussions with CARTA management.

Due to the scope limitations encountered during the audit, we were unable to test CARTA's procurement system and controls in accordance with applicable GAGAS requirements, or obtain sufficient, appropriate evidence to determine whether CARTA's procurements comply with applicable law, regulations, and the Purchasing Policy. As a result, we could not sufficiently assess the design, implementation, and operating effectiveness of CARTA's procurement system and controls, or provide reasonable assurance that procurements by CARTA with City appropriated funds comply with applicable law and regulations.

We conducted this performance audit from August 2022 to December 2022; and, except as otherwise noted above, performed the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence we obtained provides a reasonable basis to support the limited findings and conclusions expressed herein.

APPENDIX B: PRIORITY LEVEL DEFINITIONS

Priority 1: Critical control weakness exists that exposes the Auditee to a high degree of risk. Noncompliance with federal, state or local law, regulation, statute, charter or ordinance will always be considered a priority 1.

Priority 2: Control weakness exists that exposes the Auditee to a moderate degree of risk.

Priority 3: The opportunity for improved efficiency or reduced exposure to risk exists.

APPENDIX C: 2015 OIA NONCOMPLIANCE MEMO**OFFICE OF INTERNAL AUDIT**
Stan Sewell, City Auditor

July 24, 2015

Lisa Maragnano, General Manager
CARTA
1617 Wilcox Blvd.
Chattanooga, TN 37406
Via email: maragnano_lisa@gocarta.org

Dear Ms. Maragnano:

While conducting a separate project related to CARTA (letter issued June 12, 2015), we noted the organization does not adhere to the requirements of the Municipal Purchasing Law of 1983 (T.C.A. § 6-56-301, et seq.). Upon inquiry of your CFO, she advised she had no knowledge of this law. Subsequently, she obtained and forwarded an opinion of CARTA's attorney indicating CARTA is not subject to the Municipal Purchasing Law. The premise of this opinion appears to be that "CARTA is...created under the provisions of Section 7-56-101 et seq. of the Tennessee Code."

It is important to note CARTA was created by ordinance of the City of Chattanooga under the referenced Tennessee Code which specifically states (see T.C.A. § 7-56-108 **Part deemed part of the municipal charter**) "This part shall form a part of the charters of all incorporated municipalities in the state of Tennessee...." CARTA was created under the charter of the City of Chattanooga by ordinance of the City of Chattanooga (see City Code § 23-1 et seq.). One need only look to the opening sentence of City Code Section 23-1 for confirmation as it states "There is hereby created...the Chattanooga Area Regional Transportation Authority...." [Emphasis added]

It appears CARTA is an arm of the City of Chattanooga. The Attorney General opined that CARTA is considered a part of the municipality for antitrust liability purposes and that CARTA is the City of Chattanooga's agency that licenses and regulates taxi services (see Op. 86-001 and Op. 85-270, respectively). The Attorney General has further opined that the Knoxville Transit Authority (KTA), also created under the provisions of T.C.A. § 7-56-101, et seq., is a municipal agency and is an arm of the City of Knoxville (see Op. 84-72 and Op. 86-001). CARTA and KTA were both created by ordinance and are found in the respective City Codes. Also, board members are appointed and approved by city officials for CARTA, as with KTA. The Attorney General has also opined that similarly created entities are part of their creating municipalities.

CARTA has express legal authority to enter into contracts. However, there is nothing in the T.C.A. that specifies how that authority should be exercised (no exceptions to the Municipal Purchasing Law). The Attorney General has opined that when the General Assembly has not provided specific purchasing procedures nor specific exemptions, the entity is subject to the same purchasing provisions as applied to the creating entity (see Op. 04-101). In this instance, that would be the Municipal Purchasing Law of 1983.

We recommend CARTA implement policies and procedures as efficiently as possible to ensure compliance with the Municipal Purchasing Law of 1983, including all such policies necessary to comply with the *Internal Control and Compliance Manual for Tennessee Municipalities*. If it remains your position that the Municipal Purchasing Law does not apply to CARTA, I would highly recommend you seek an opinion from the Attorney General and that you comply with the Law until such time as you receive an opinion from the Attorney General.

The issues discussed in this letter are not the result of an audit performed in accordance with generally accepted government auditing standards. Had we performed such an audit, additional issues might have been reported. The purpose of this letter is to provide information that may be useful to management and the Board.

Very truly yours,

Stan Sewell, CPA, CGFM, CFE
City Auditor

cc: CARTA Board of Directors
David DiStefano, Audit Committee Chair
Wade Hinton, City Attorney

City of Chattanooga Fraud, Waste, and Abuse Hotline

Internal Audit's Fraud, Waste, and Abuse Hotline gives employees and citizens an avenue to report misconduct, waste or misuse of resources in any City facility or department.

Internal Audit contracts with a hotline vendor, The Network, to provide and maintain the reporting system. The third party system allows for anonymous reports. All reports are taken seriously and responded to in a timely manner. Reports to the hotline serve the public interest and assist the Office of Internal Audit in meeting high standards of public accountability.

To make a report, call 1-877-338-4452 or visit our website:

www.chattanooga.gov/internal-audit